

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

Amendment and Compilation
of Chapter 15-306,
Hawaii Administrative Rules

November 17, 2010

SUMMARY

1. §§15-306-2, 15-306-3, 15-306-12, and 15-306-13 are amended.
2. A new §15-306-15 added.
3. Chapter 306 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 306

GENERAL EXCISE TAX EXEMPTIONS

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Historical Note: Chapter 15-306, Hawaii Administrative Rules, is substantially based upon Chapter 377 of Title 6, Hawaii Administrative Rules, [Eff 2/8/93; am 6/8/98; R 10/25/99], and Chapter 175 of Title 15, Hawaii Administrative Rules. [Eff DEC 11 2010 10/25/99; R 10/08/07]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-306-1 Purpose. This chapter implements sections 201H-36 and 237-29, HRS, regarding general excise tax exemptions for qualified persons and firms involved in providing low and moderate income housing. The legislative intent of the general excise tax exemption is to achieve cost savings to assure economic feasibility which will encourage and enable the production of as many lower cost housing units as possible. [Eff 10/08/07; am 09/05/08; comp DEC 11 2010] (Auth: HRS §237-29) (Imp: HRS §§237-29, 201H-36)

§15-306-2 Definitions. As used in this chapter: "Allowable construction costs" means expenses incurred by a contractor, for contracting, services and materials which are to be incorporated (in such a form as to be perceptible to the senses) into, or used completely by the contractor in, the development and construction of real property improvements and fixtures for a newly constructed, or moderately or substantially rehabilitated eligible housing project that are associated with the residential portion of the project, or that are incidental or de minimis non-residential uses within the project.

"Allowable development costs" means amounts incurred by a developer or a contractor for contracting, services, and materials that are used for the planning, development, and construction of a newly constructed, or moderately or substantially rehabilitated, eligible housing project that are associated with the residential portion of the project, or that are incidental or de minimis non-residential uses within the project.

"Allowable financing costs" means:

- (1) Amounts paid by a developer or owner to the holder of any debt instrument secured by the leasehold or fee simple interest of the developer or owner in an eligible housing project, and to qualified persons or firms in connection with obtaining or administering such financing; and
- (2) Interest earned by a developer or owner on construction loan funds;

that are associated with the residential portion of the project, or that are incidental or de minimis non-residential uses within the project.

"Claimant" means a person or firm filing a claim with the corporation for general excise tax exemptions allowed under section 237-29, HRS.

"Contractor" means a person defined as a contractor under section 237-6, HRS.

"Corporation" means the Hawaii housing finance and development corporation.

"Developed under the sponsorship of a private nonprofit corporation" means a newly constructed, or moderately or substantially rehabilitated housing project developed under a program qualified by the corporation and sponsored by a private nonprofit corporation.

"Economic feasibility" means the ability of the eligible housing project to produce sufficient revenue to pay all operating expenses and charges to provide reasonable return and recapture of the capital invested.

"Eligible housing project" means:

- (1) A rental housing project by a qualified person or firm where at least fifty percent of the available units are for households with incomes at or below eighty per cent of the area median family income, as determined by HUD, of which at least twenty per cent of the available units are for households with incomes at or below sixty per cent of the area median family income, as determined by HUD;
- (2) A housing project meeting at least one of the three income criteria and at least one of the three development criteria that follow:
 - (A) Income criteria:
 - (i) At least twenty per cent of the units in the project are rented or sold to households with incomes of up to fifty per cent of the area median income as determined by HUD;
 - (ii) At least forty per cent of the units are rented or sold to households with incomes of up to ninety-five per cent of the area median income, as determined by HUD; or
 - (iii) At least sixty per cent of the units must be rented or sold to households with incomes of up to one hundred forty per cent of the area median income, as determined by HUD; and
 - (B) Development criteria:
 - (i) Rental or for-sale housing projects which are developed under a housing development program pursuant to part II of chapter 201H, HRS;

- (ii) Rental or for-sale housing projects which are developed or acquired for the provision of affordable housing under a government assistance program approved by the corporation;
- (iii) Rental or for-sale housing projects developed under the sponsorship of a private nonprofit corporation.

"Eligible housing projects" may include incidental or de minimis non-residential uses that are intended to directly benefit the residents of the housing project.

"Government assistance program" means any housing program qualified by the corporation and administered or operated by the State, the corporation, the United States, or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise, which may be used to effectuate housing development and acquisition for the provision of affordable housing for qualified persons in the State.

"Government assistance program" includes, but is not limited to, the United States Department of Agriculture's 502 and 515 programs; the Federal Housing Administration's 235 program; the United States Department of Housing and Urban Development's HOME, HOPE, 202, and 811 programs; the section 802 military housing program; the military construction and family housing program; the military housing privatization initiative program; the low income housing tax credit program; the corporation's rental housing trust fund program; the corporation's rental assistance program; tax exempt or taxable multi-family bond financing programs administered by the corporation or any of the counties; the acquisition of land and existing structures for the provision of affordable housing, for which the legislature has appropriated or otherwise authorized funding; and residential projects developed by the department of Hawaiian home lands.

"HRS" means the Hawaii Revised Statutes.

"HUD" means the United States Department of Housing and Urban Development.

"Limited distribution mortgagor" means an entity which may consist of a person, partnership, association, or limited liability partnership and company which has executed with the federal, state, or county agency a regulatory agreement as to rents, charges, profits, dividends, development costs, and methods of operation.

"Lower income households" mean households with incomes up to and including one hundred forty per cent of the area median income as determined by HUD.

"Moderate rehabilitation" means rehabilitation to upgrade a unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure.

"Nonprofit corporation" means a corporation incorporated under chapter 414D, HRS.

"Qualified person or firm" means an individual, partnership, joint venture, corporation, association, limited liability partnership, limited liability company, business, trust, or any organized group of persons or legal entities, or any combination thereof, which possesses all professional or vocational licenses necessary to do business in the State of Hawaii in conjunction with the planning, design, financing, construction (including materials and supplies for new construction, moderate rehabilitation, and substantial rehabilitation), sale, or rental of eligible housing projects.

"Staff" means the employed personnel of the corporation Hawaii.

"State" means the State of Hawaii.

"Substantial rehabilitation" means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements and may include, but is not limited to, the gutting and extensive reconstruction of a unit or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance. Substantial rehabilitation also includes rehabilitation activity that is necessary to correct substandard conditions to make essential improvements, and to repair major systems in danger of failure. The term "major systems" includes, but is not limited to, such items as roof structures, ceiling, wall or floor structures, foundations, elevators, and plumbing or electrical repair, replacement, or in some cases removal. Substantial rehabilitation activities also include energy and other natural resource conservation related repairs and improvements, as well as improvements required to provide access or added safety for the handicapped or elderly and renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use (e.g., conversion of a hotel to housing for elders). [Eff 10/08/07; am 09/05/08; am and comp DEC 11 2010] (Auth: HRS §237-29) (Imp: HRS §§237-29, 201H-36)

§15-306-3 Fees. The corporation shall charge the following fees:

- (1) Application for exemption of an eligible housing project and claimant: \$500;
- (2) Subsequent applications for certification of claimants of an eligible housing project: \$200; and
- (3) Application for annual certification of rental income generated by an eligible housing project: \$200. [Eff 10/08/07; am 09/05/08; am and comp DEC 11 2010] (Auth: HRS §237-29) (Imp: HRS §§237-29, 201H-36)

SUBCHAPTER 2

CERTIFICATION OF PERSONS AND ENTITIES

§15-306-11 Types of income eligible for exemption. (a) With respect to for-sale housing projects, the gross income received by a qualified person or firm as allowable development costs, allowable construction costs, or allowable financing costs for the planning, design, financing, construction, or sale of an eligible housing project may be exempt from general excise taxes.

(b) With respect to rental housing projects, the gross income received by a qualified person or firm as allowable development, costs, allowable construction costs, or allowable financing costs for the planning, design, financing, construction, moderate rehabilitation, or substantial rehabilitation of an eligible housing project may be exempt from general excise taxes.

(c) Rents received from residential units in a rental housing project may be exempt from general excise taxes; provided that in an economically integrated housing project in which only a portion of the units in a project are targeted for lower income households, the exemption shall apply to only that portion targeted for lower income households.

(d) Revenues received from commercial, industrial, or other nonresidential uses within an eligible housing project, such as coin operated vending machines, laundromats, parking fees, and the like, shall not be eligible for an exemption from general excise taxes.

(e) Except for moderate rehabilitation and substantial rehabilitation, revenues received for contracting, services, and materials provided in connection with the management, operation, maintenance, and repair of a rental housing project shall not be eligible for an exemption from general excise taxes. [Eff 10/08/07; am 09/05/08; am and comp [§ 15-306-12] (Auth: HRS §237-29) (Imp: HRS §237-29)

§15-306-12 Application for certification of newly constructed or rehabilitated housing projects. When an exemption from general excise taxes is requested by a claimant involved with a newly constructed or rehabilitated housing project, the following shall apply:

- (1) The developer or general contractor of an eligible housing project shall submit to the corporation completed general excise tax exemption claims (department of taxation form G-37) on behalf of any subcontractors, material houses, real estate sales agencies, or other firms involved with the planning, design, financing, construction, or sale of the housing project;
- (2) Along with the claim forms, the developer or general contractor shall submit to the corporation the following information on the eligible housing project:
 - (A) A description of the eligible housing project, including the number of housing units affordable to households earning up to fifty per cent, sixty per cent, eighty per cent, ninety-five per cent, and one hundred forty per cent, respectively, of the area median income, as determined by HUD;

- (B) Authorization for the corporation to conduct on-site inspections of the affordable housing project if the project is not being developed or rehabilitated under the sponsorship of the corporation;
 - (C) A written statement indicating how any cost savings realized from the exemption from general excise taxes will be used;
 - (D) A cover letter requesting the tax exemption, which includes the following:
 - (i) A list of qualified persons or firms previously granted or currently claiming an exemption; and
 - (ii) Contract amounts for each of the qualified persons or firms; and
 - (E) Any additional information necessary for the corporation to make a determination; and
- (3) Upon receipt, staff of the corporation shall time stamp the claim form.
- (A) If the person or firm is found to be eligible under these rules, staff shall issue a certification for exemption (department of taxation form G-37) to the claimant within ten working days thereafter, and shall forward the originals of the certified claim forms to the department of taxation.
 - (B) If a person or entity is found to be ineligible under these rules, staff shall, within ten working days of receipt, so notify the claimant and the developer or general contractor, along with the reason or reasons that the claim is ineligible for an exemption.
- (4) All projects not yet placed in service shall submit to the corporation annual reports containing the following information:

- (A) Project status, including, but not limited to, status of construction of affordable units;
- (B) Total amount of allowable construction costs, allowable development costs, and allowance financing costs accrued to date; and
- (C) A written statement indicating how any cost savings realized from the exemption from general excise taxes were used;

In no event shall the corporation accept a claim for certification more than one year following the close of the claimant's taxable year for which the exemption is claimed. [Eff 10/08/07; am 09/05/08; am and comp DEC 1; 10] (Auth: HRS §237-29)
(Imp: HRS §237-29)

§15-306-13 Application for certification of rental housing projects. The following requirements shall apply to requests for exemptions from general excise taxes for affordable rents received from affordable housing units in newly constructed or moderately or substantially rehabilitated rental housing projects:

- (1) The claimant shall annually complete and submit to the corporation a general excise tax exemption claim (department of taxation form G-37);
- (2) Along with the claim form, the claimant shall submit to the corporation the following information on the eligible housing project:

- (A) A description of the eligible housing project, including the number of housing units affordable to households earning up to fifty per cent, sixty per cent, eighty per cent, ninety-five per cent, and one hundred forty per cent, respectively, of the area median income, as determined by HUD;
 - (B) A schedule showing rents charged on all housing units providing verification that the lower income household tenants meet the income criteria necessary for the tax exemption and an audited income statement;
 - (C) Authorization for the corporation to conduct on-site inspections of the project;
 - (D) A written statement indicating how any cost savings realized from the exemption from general excise taxes will be used; and
 - (E) Any additional information necessary for the corporation to make a determination; and
- (3) Upon receipt, staff of the corporation shall time stamp the claim form; and:
- (A) If the claimant is found to be eligible under these rules, staff shall issue a certification for exemption within ten working days thereafter, and shall forward the original of the certified claim form to the department of taxation; or
 - (B) If a person or entity is found to be ineligible under these rules, staff shall, within ten working days of receipt, so notify the claimant, along with the reason or reasons that the claim is ineligible for an exemption.

In no event shall the corporation accept a claim for certification more than three years following the close of the claimant's taxable year for which the exemption is claimed. [Eff 10/08/07; am 09/05/08; am and comp DEC 11 0] (Auth: HRS §237-29) (Imp: HRS §237-29)

§15-306-14 Criteria for determining eligibility of projects. In approving or disapproving a project for exemption from general excise taxes, the corporation shall determine whether:

- (1) The project is an eligible housing project under these rules;
- (2) The exemption from general excise taxes will achieve cost savings to assure economic feasibility which will encourage and enable the production or preservation of as many lower cost housing units as possible; and
- (3) The project is consistent with any other requirements under the law or under this chapter.

The corporation may disapprove a project for exemption from general excise taxes if these criteria are not met. [Eff 10/08/07; am 09/05/08; am and comp DEC 11 2010] (Auth: HRS §§201H-36, 237-29) (Imp: HRS §§201H-36, 237-29)

§15-306-15 Substantial changes. If a contract for work on a certified project experiences substantial changes, the claimant must submit a revised, or amended, department of taxation form G-37 for certification by the corporation. This revised form G-37 must include the full amounts of the contract. A revised department of taxation schedule A to form G-37 must also be submitted, if applicable. For purposes of this section, "substantial changes" means changes of more than twenty per cent of the original contract amount, or more than \$200,000. [Eff DEC 11 2010] (Auth: HRS §§201H-36, 237-29) (Imp: HRS §§201H-36, 237-29)

SUBCHAPTER 3

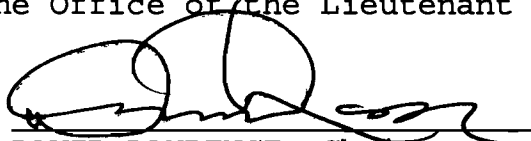
MISCELLANEOUS PROVISIONS


§15-306-21 Exemptions for certain existing rental projects. Any existing rental project for which a general excise tax exemption was granted by the Hawaii housing authority prior to June 9, 1983, is not required to reapply for an exemption unless there is a change in use or ownership of the project which results in a change in the target tenant population. Upon such a change in use or ownership, application for recertification shall be made to the corporation. If qualified, the successive owner of the project may receive an annual exemption as long as the project remains an eligible housing project. [Eff 10/08/07; am 09/05/08; comp DEC 11 2010] (Auth: HRS §237-29) (Imp: HRS §§ 201H-36, 237-29)

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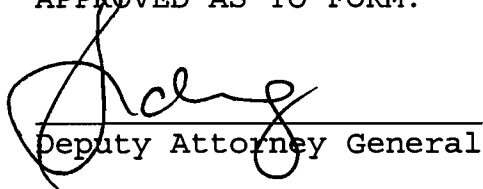
Amendments to and compilation of chapter 15-306, Hawaii Administrative Rules, on the Summary Page dated November 17, 2010 were adopted on November 17, 2010 following a public hearing held on November 16, 2010 after public notice was given in the Honolulu Star-Advertiser, The Garden Island, Maui News, West Hawaii Today, and the Hawaii Tribune-Herald newspapers on October 16, 2010.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.



DAVID LAWRENCE, Chairperson
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Development Corporation


STANLEY SHIRAKI, Director
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APPROVED AS TO FORM:


Deputy Attorney General

APPROVED:


LINDA LINGLE
Governor
State of Hawaii

Dated: _____

Filed

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OFFICE